

APPEAL NO. 030822
FILED MAY 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 3, 2003. The following issues were before the hearing officer: (1) Does the compensable injury of _____, extend to and include injuries to anterolateral retinaculum, impingement in the rear of the talus joint area, fibulocalcaneal ligament, and/or the deltoid ligament; (2) Did the appellant/cross-respondent (claimant) have disability, and, if so, for what period; (3) Was the respondent/cross-appellant's (carrier) contest of compensability on January 23, 2003, based on newly discovered evidence that could not reasonably have been discovered at an earlier date, thus allowing the carrier to reopen the issue of compensability of the claimant's injury on _____; and (4) If the carrier is allowed to reopen the issue of compensability, did the claimant sustain a compensable injury on _____? The hearing officer determined that: (1) the compensable injury of _____, extends to and includes injuries to anterolateral retinaculum, impingement in the rear of the talus joint area, fibulocalcaneal ligament, and the deltoid ligament; (2) the claimant had disability from January 15, 2003, through the date of the CCH; (3) the carrier's contest of compensability, filed on January 23, 2003, was not based on newly discovered evidence because that evidence could reasonably have been discovered at an earlier date; and (4) the carrier is not permitted to reopen the issue of compensability. The hearing officer further found that the claimant did not sustain an injury in the course and scope of her employment on _____. The carrier appeals each of the hearing officer's determinations on legal and sufficiency of the evidence grounds. The claimant did not file a response. The claimant cross-appeals the hearing officer's disability determination on sufficiency of the evidence grounds, asserting that she also had disability from July 3, 2002, through January 14, 2003. The claimant also appeals the findings with regard to course and scope, arguing that such findings are superfluous and against the great weight of the evidence. The carrier urges affirmance of the matters appealed by the claimant.

DECISION

Affirmed.

CARRIER'S APPEAL

Pursuant to Section 410.202(a) and (d), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code. Texas Workers' Compensation Commission (Commission) records indicate that the hearing officer's decision was received by the carrier's Austin representative on March 14, 2003. As provided in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 156.1(c) (Rule 156.1(c)), "notice from the Commission, sent to the designated representative's Austin address, is notice from the Commission to the insurance carrier." Accordingly,

the last date for the carrier to timely file an appeal was April 4, 2003. The carrier's appeal was hand-delivered to the Commission and stamped as received by the Commission's Chief Clerk of Proceedings on April 8, 2003. Therefore, the appeal is untimely and the complained-of determinations have become final. Section 410.169.

CLAIMANT'S APPEAL

The hearing officer did not err in determining that the claimant did not have disability from July 3, 2002, through January 14, 2003. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant contends that the hearing officer erred in finding that she was not injured in the course and scope of her employment, given the determination that the carrier could not reopen the issue of compensability. The Appeals Panel early on recognized that the benefits dispute resolution provisions in the 1989 Act envision an "issue driven" system. As such, the hearing officer did not err in addressing each issue before him, regardless of whether the resolution of one of the issues was dispositive of the remaining issues. Nothing in our review of the record indicates that the complained-of findings are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra. Notwithstanding, the claimant's injuries are compensable, as a matter of law, because the carrier is not permitted to reopen the issue of compensability.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **UTICA NATIONAL INSURANCE COMPANY OF TEXAS** and the name and address of its registered agent for service of process is

**RICHARD A. MAYER
11910 GREENVILLE AVENUE, SUITE 600
DALLAS, TEXAS 75243-9332.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge